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LAMAR D. QUINN, ) NO. CV 06-04434 DOC (SS)  
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 ) Petitioner, )  
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 ) v. )  
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 ) ANTHONY HEDGPETH, Warden, )  
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 ) Respondent. )

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, all of the records and files herein, and the Magistrate Judge's Report and Recommendation. The time for filing Objections to the Report and Recommendation has passed and no Objections have been received. Accordingly, the Court accepts and adopts the findings, conclusions and recommendations of the Magistrate Judge, with the following modification:

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DUZ

1 Petitioner filed a late Traverse on October 16, 2008. The Court  
2 notes that Petitioner's Traverse was originally due in 2007. On January  
3 30, 2008, the Court sua sponte provided Petitioner an extension of time  
4 to file a Traverse. However, no Traverse was filed. On July 2, 2008,  
5 this case was transferred to a new Magistrate Judge as the previously  
6 assigned Magistrate Judge was no longer available.

7  
8 The Court issued its Report and Recommendation, recommending  
9 denial of the First Amended Petition, on September 25, 2008.  
10 Petitioner's Objections were due by October 15, 2008. No Objections  
11 were filed. On October 16, 2008, however, Petitioner filed a document  
12 entitled "Traverse Writ Answering The Answer For Writ Of Federal Habeas  
13 Corpus By State Prisoner" (the "Traverse").

14  
15 Petitioner raises new claims in his Traverse. He argues that he  
16 was prejudiced by the trial court's "joinder" of Petitioner's trial with  
17 the trial of his co-defendant, Tryon Jones. (Traverse at 19).  
18 Furthermore, Petitioner asserts that he was prejudiced by the  
19 introduction of testimony about gang involvement in the crime. (Id. at  
20 19-20). Finally, Petitioner claims for the first time that he was  
21 subjected to a suggestive identification procedure. (Id. at 23).

22  
23 The Court notes that none of these claims were exhausted before the  
24 state courts. (See First Amended Petition ("FAP"), at 2-3, discussing  
25 claims included in state filings). Petitioner offers no explanation for  
26 his failure to exhaust these claims or for his extraordinary delay in  
27 bringing the claims to the Court's attention. The Court cannot stay an  
28


1 exhausted petition for the purpose of considering unexhausted claims if  
2 the petitioner lacks good cause for his delay in exhausting such claims.  
3 Rhines v. Weber, 544 U.S. 269, 277, 125 S. Ct. 1528, 161 L. Ed. 2d 440  
4 (2005). Here, Petitioner lacks any explanation for his delay and has not  
5 demonstrated good cause. Moreover, Petitioner's failure to raise any of  
6 these claims in either the original Petition or the FAP provides  
7 additional grounds for this Court to decline review. See Cacoperdo v.  
8 Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994) ("A Traverse is not the  
9 proper pleading to raise additional grounds for relief."). The Court  
10 therefore declines to review any of the unexhausted and untimely claims  
11 raised in Petitioner's late Traverse.

12  
13 Accordingly, IT IS ORDERED THAT:

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15 1. The First Amended Petition is DENIED and Judgment shall be  
16 entered dismissing this action with prejudice.

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18 2. The Clerk shall serve copies of this Order and the Judgment  
19 herein by United States mail on Petitioner and on counsel for  
20 Respondent.

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22 DATED: *October 23, 2008*

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26 DAVID O. CARTER  
27 UNITED STATES DISTRICT JUDGE  
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